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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DEC 11 1995

In the Matter of:)	
)	
Price Cap Performance Review)	CC Docket No. 94-1
for Local Exchange Carriers)	
)	
Treatment of Operator Services)	CC Docket No. 93-124
Under Price Cap Regulation)	
)	
Revisions to Price Cap Rules)	CC Docket No. 93-197
for AT&T)	

COMMENTS

The Information Technology and Telecommunications Association ("TCA"),¹ by its attorneys, respectfully submits its comments regarding the Second Further Notice of Proposed Rulemaking in the above-captioned proceeding.² As discussed herein, TCA urges the Commission pursue relaxed regulation of local exchange carrier ("LEC") access rates where doing so can drive access rates toward cost without undermining competition in the long distance and interexchange access markets. Deregulation of access rates should not, however, be pursued for its own sake or in response to the prospect of increased local exchange competition.

¹ TCA was until recently known as the Tele-Communications Association. The association changed its name in September 1995 to reflect its members' interest in all aspects of voice and data communications.

² Second Further Notice of Proposed Rulemaking in CC Docket No. 94-1, Further Notice of Proposed Rulemaking in CC Docket No. 93-124, and Second Further Notice of Proposed Rulemaking in CC Docket No. 93-197, FCC 95-393 (released Sept. 20, 1995) (collectively referred to herein as the "Second Further Notice of Proposed

I. INTRODUCTION

A. Statement of Interest

TCA has been a longstanding participant in the Commission's price cap proceedings.³ In the past, TCA has focused its comments primarily on the potentially detrimental effect of incentive-based regulation on service quality. In this regard, TCA has cautioned that strong cost-cutting incentives may result in diminished service quality, particularly for smaller consumers and rural locations. TCA has suggested various methods of keeping track of service quality performance under price cap regulation, and the Commission has adopted many of TCA's recommendations.

Of course, TCA's interest in price cap regulation goes far beyond service quality. The Commission's actions in this proceeding will directly affect TCA's members as consumers of long distance voice and data communications services. Access charges are the largest cost faced by long distance carriers, and regulation that drives above-cost access rates toward cost will consequently permit lower long distance rates. Conversely, regulation that tolerates unreasonable price discrimination or allows LECs to offset decreases in competitive markets with increases in non-competitive ones will impede fair long distance competition and injure consumers.

³ TCA is an association of telecommunications managers. It has almost one thousand corporate, governmental, and non-profit members, ranging in size from entities with two lines to some of this Nation's largest companies. As such, TCA is the most diverse association of telecommunications consumers in the country.

B. The Commission's Proposals

The SFNPRM proposes "specific changes to interstate access price regulation to respond to changes in the market for these services and to rely more heavily on market forces to achieve our public policy goals."⁴ According to the Commission, the proposals are intended to benefit consumers by encouraging "market-based prices that reflect the cost of service," efficient investment, and competitive entry in the access and local exchange markets.⁵ At the same time, the Commission recognizes that it must not relax regulation in a manner "that could adversely affect competition in the interexchange market, which would collaterally harm long distance users."⁶

The proposals contemplate a three-stage reduction in oversight of LEC access rates. In the first stage, the Commission would eliminate the lower service band index ("SBI"), allow new discounts in the form of "alternative pricing plans," and make it easier for LECs to introduce new services. The Commission seeks comment on whether this pricing flexibility should be conditioned on a LEC's lowering barriers to local exchange competition.

In the second stage, as competition becomes "substantial" for particular access services, the Commission would treat such services pursuant to streamlined regulation. LECs could file tariffs on 14 days' notice without cost support, and their rates would enjoy a presumption of lawfulness. LECs also could offer contract rates on a non-discriminatory basis.

⁴ SFNPRM at ¶ 1.

⁵ Id.

⁶ Id. at ¶ 28.

In the third stage, the Commission would declare a LEC non-dominant for particular service or geographic areas. In considering whether non-dominant status was warranted, the Commission would determine whether the LEC no longer possessed market power. Once declared non-dominant, the LEC could file tariffs on one day's notice without cost support.

II. REFORM OF THE PRICE CAP RULES IS WARRANTED TO THE EXTENT IT BRINGS ACCESS RATES CLOSER TO COST AND DOES NOT IMPEDE FAIR COMPETITION IN THE LONG DISTANCE MARKET.

The SFNPRM contains a set of sweeping and aggressive proposals intended to achieve undeniably appropriate objectives. TCA fully shares the Commission's desire to reduce access rates, and consequently to make possible lower long distance prices. TCA also concurs that, where market forces can be relied on to protect consumers, they are preferable to regulation. Nonetheless, TCA is concerned that the proposals in the SFNPRM go too far, too fast. As discussed herein, the Commission can better attain its goals by setting a more conservative course, permitting targeted downward pricing flexibility in a manner that pushes access rates toward cost and promotes long distance competition.

A. The SFNRPM Establishes No Basis for Dramatic Deregulation of LEC Access Rates.

The SFNPRM identifies goals for price cap reform, but does not seeks to explain how adoption of the proposals would advance those goals. For example, it asserts a belief that "these proposals will facilitate more efficient pricing by LECs and remove incentives for inefficient entry," and therefore tentatively concludes that "they need not be conditioned on a

competitive showing."⁷ It does not, however, reveal why, in the absence of effective competition, the proposed relaxation of pricing constraints will drive rates toward cost, instead of merely enabling discriminatory, non-cost based rate reductions for services subject to incipient competition to be offset with increases for customers with no competitive alternatives. Nor, most importantly, does the SFNPRM endeavor to show that far-reaching deregulation of wholesale switched access services can be accomplished without harming consumers of retail long distance services.

Against this background, TCA believes the proposals go too far because competition in the access market has not taken hold to the point that substantial deregulation is warranted. It is true, of course, that special access is facing incipient competition, at least in certain urban areas. The LECs already enjoy considerable pricing flexibility for special access, however; they may utilize volume and term discounts, engage in zone density pricing, and change rates on a streamlined basis within the service pricing bands. It is not clear, based on the record already compiled in Docket No. 94-1, that additional pricing flexibility, such as contract-based tariffs, is either necessary for fair competition or capable of being implemented in a non-discriminatory manner. The LECs have less pricing freedom for switched access services, but they also face far less competition. The only element of switched access that faces any competitive pressure is dedicated transport, and with respect to this element, the LECs may offer volume and term discounts under certain circumstances

To the extent the SFNPRM seeks comment on whether deregulation should be tied to competition -- a principle that TCA endorses -- it focuses on the wrong market. Rather than linking reduced regulation to increased access competition, the SFNPRM suggests that removal of barriers to local exchange competition "is the most appropriate mechanism for conditioning additional price cap flexibilities"⁸ TCA certainly encourages the Commission to do everything within its authority to promote local exchange competition. The Commission must acknowledge, however, that the extent of local exchange competition is essentially irrelevant to the interstate access marketplace.

The vast majority of access revenues derive from switched access, which is composed of three major elements: the local loop, local switching, and transport between LEC switches and the IXC point of presence. Local exchange competition undeniably provides alternative suppliers of local loops and local switching, but it creates no incentive for these alternative suppliers to act as competitors. An end user selecting an alternative local service provider also chooses, by default, the provider of the local loop and local switching. Competing local service providers accordingly have no incentive to price these elements closer to cost, because the customer's long distance carrier cannot avoid paying the local service provider of the customer's choice for switched access.

The only relevant market for determining whether deregulation of access rates is warranted is the access market. Until such time as access competition expands significantly beyond its currently limited state, the Commission must recognize that additional pricing

⁸ SFNPRM at ¶¶ 106-108.

flexibility cannot be justified by a need to respond to competition. Any reform of the price cap rules consequently must be driven by the need to make those rules more effective in lowering rates to cost in the absence of effective competition. TCA's suggestions in this regard are set forth below.

B. The Commission Should Allow Additional Downward Pricing Flexibility Under Rules That Assure Non-Discriminatory Treatment of Access Customers.

TCA believes the most effective means of bringing access rates closer to cost in the short term is to remove obstacles to the filing of below-band rates. The simplest means of doing so, as proposed in the SFNPRM, is to eliminate the lower SBI.⁹ Under the existing price cap rules, the LECs may lower rates for each service category in the traffic-sensitive and trunking baskets by 10 percent per year subject to streamlined review, and by 15 percent within density pricing zones.¹⁰ The Commission suggests that, "[i]f the lower service band limit were eliminated, the LECs and their competitors will be able to engage in true competition and bring prices down toward cost immediately."¹¹ TCA agrees with this proposal, as long as it is conditioned in three important respects.

First, the Commission should specify up front the standard it will use to determine whether rates are below-cost. Doing so will promote certainty by informing LECs how low they can price access without risking intervention by the Commission. Advance knowledge

⁹ SFNPRM at ¶¶ 83-85.

¹⁰ Price Cap Performance Review for Local Exchange Carriers, 10 FCC Rcd 8962, (1995) (¶ 411).

¹¹ SFNPRM at ¶ 83.

of the standard also will enable competitive access providers to ascertain whether market entry is rational by comparing their own costs to those likely experienced by the LECs.

Second, the Commission should prohibit or sharply limit upward pricing flexibility once rates have been reduced. Access rates are generally well in excess of costs, and the LECs should be enjoying declining costs in any event, as they deploy low maintenance fiber transmission equipment and digital switches. Permitting substantial downward pricing flexibility without restraining the LECs' ability to subsequently raise rates would invite efforts to foreclose competitive entry. In contrast, capping upward pricing flexibility would deter such anticompetitive conduct and assure that rates remain cost-based. TCA accordingly supports prohibiting rate increases in the absence of cost justification. Alternatively, and at a minimum, the Commission should adopt its proposal to establish a one percent upper SBI limit for service categories in which the LECs have reduced rates pursuant to newly granted pricing flexibility.¹²

Third, the Commission must assure that relationships between rates for similar switched access services are economically rational. All access elements are provided over the same physical facilities -- local loops, switches, and interoffice links -- regardless of the identity of the access customer or the capacity taken. Accordingly, different variations of access services, such as different transport capacities, share a high degree of common costs. This creates an opportunity for a LEC to manipulate cost recovery so that potentially competitive services are priced close to incremental cost and non-competitive services bear a

¹² SFNPRM at ¶ 105.

disproportionate amount of common costs. Such strategic pricing may undermine effective long distance competition and thereby harm interexchange consumers.

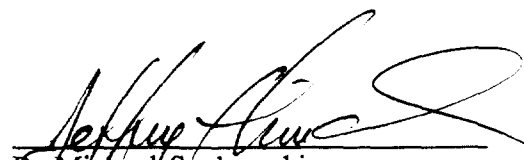
III. CONCLUSION

Competition in the access market does not support granting the LECs the substantial additional pricing flexibility proposed in the SFNPRM, and competition in the local market, if and when it develops, will not effectively constrain above-cost access rates. Consequently, the relaxation of access price regulation, by itself, will not produce economic rate levels and will injure consumers by distorting long distance competition. To accomplish the fundamental objective of driving access charges closer to cost, the Commission should reform its rules to allow additional downward pricing flexibility, under safeguards that prevent discrimination among access customers and promote rational rate relationships among access services.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of December, 1995,
I caused copies of the foregoing "Comments of Information Technology and
Telecommunications Association" to be hand-delivered to the following:

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